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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 JESSICA DAILEY,

12 Plaintiff,

13 v.

14 LINKUS ENTERPRISES, LLC,

15 Defendant.

16
17 Case No. 1:20-cv-01407-AWI-SAB

18 ORDER RE: INFORMAL DISCOVERY
DISPUTE

19 (ECF Nos. 56, 57, 59)

20 On April 28, 2022, the parties filed a joint informal discovery dispute letter brief. (ECF
21 No. 57.) The dispute involves certain written discovery responses to Plaintiff's request for
22 production of documents (set three), special interrogatories (set two), and requests for admissions
23 (set two), which Plaintiff contends are deficient. An informal videoconference was held on April
24 29, 2022, to address the dispute. Counsel Charles Taylor and Danielle Patch appeared for
25 Plaintiff Jessica Dailey, and counsel Christina Tillman and Melissa Cerro appeared for
26 Defendant. The Court notes this matter was conducted off the record; however, the parties were
afforded an opportunity to place the matter on the record and no party requested to do so.

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I.

BACKGROUND

3 Since about 2002, Plaintiff was employed by Defendant as its Director of
4 Communications. (Compl. ¶ 8, ECF No. 1.) On April 19, 2020, Plaintiff informed Defendant
5 that she needed leave to care for her seven-year-old daughter who suffers from learning
6 disabilities and her daughter's school and daycare had closed due to COVID 19. (Id. at ¶ 10.)
7 Plaintiff was granted a two-week leave which began on April 20, 2020. (Id.) On May 3, 2020,
8 Plaintiff informed Defendant that she needed to continue her leave to care for her daughter given
9 the indefinite extended school and daycare closures. (Id. at ¶ 11.) On May 4, 2020, Defendant
10 denied Plaintiff's request for leave and terminated Plaintiff. (Id. at ¶ 12.) Plaintiff filed a
11 complaint with the Department of Fair Employment and Housing and received a right to sue letter
12 dated July 9, 2020. (Id. at ¶ 6.)

13 On August 18, 2020, Plaintiff filed this action in the Superior Court of the State of
14 California, County of Fresno alleging violations of the Fair Labor Standards Act and the Families
15 First Coronavirus Response Act and California law. (ECF No. 1 at 5–20.) On October 2, 2020,
16 Defendant removed the matter to the Eastern District of California. (ECF No. 1.)

17 On December 2, 2020, the scheduling order issued setting deadlines in this matter. (ECF
18 No. 14.) The schedule has been modified numerous times to accommodate the parties' ongoing
19 discovery needs. (See ECF Nos. 22, 37, 58.) The parties have also appeared before the Court
20 both formally and informally to address discovery disputes on numerous occasions. (See ECF
21 Nos. 24, 27, 28, 34, 47.)

22 As noted above, the instant dispute concerns certain discovery requests served with
23 Plaintiff's Request for Production of Documents, set three ("RPD"), Special Interrogatories, set
24 two ("SI"), and Requests for Admissions, set two ("RFA"). More specifically, Plaintiff takes
25 issue with Defendant's responses to RPD Nos. 2, 6–11, and 14–15; SI Nos. 15, 16, 19, 21(d); and
26 RFA No. 25, as deficient.

27 On April 27, 2022, the parties requested an informal discovery dispute hearing be
28 scheduled. (ECF No. 56.) On April 28, 2022, the parties filed their joint informal discovery

1 dispute letter brief. (ECF No. 57.) On April 29, 2022, counsel for the parties (as noted above)
2 appeared before the Court by videoconference at the informal discovery dispute hearing. (ECF
3 No. 59.)

4 **II.**

5 **LEGAL STANDARD**

6 Federal Rule of Civil Procedure (“Rule”) 26 allows a party to obtain discovery “regarding
7 any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the
8 needs of the case, considering the importance of the issues at stake in the action, the amount in
9 controversy, the parties’ relative access to relevant information, the parties’ resources, the
10 importance of the discovery in resolving the issues, and whether the burden or expense of the
11 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). “Information within
12 this scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P.
13 26(b)(1). “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable
14 than it would be without the evidence; and (b) the fact is of consequence in determining the
15 action.” Fed. R. Evid. 401.

16 Rules 33, 34, and 36 govern interrogatories, requests for production and requests for
17 admissions, respectively. Under these rules, a party may make a request related to any matter that
18 may be inquired into under Rule 26(b). Fed. R. Civ. P. 33(a)(2); Fed. R. Civ. P. 34(a); Fed. R.
19 Civ. P. 36(a) (request for admission may relate to facts, the application of law to fact, or opinions
20 about either; or the genuineness of any described documents).

21 Under Rule 33, each interrogatory must, to the extent it is not objected to, be answered
22 separately and fully in writing under oath. Fed. R. Civ. P. 33(b)(3). Grounds for objecting must
23 be stated with specificity and any ground not stated in a timely objection is deemed waived unless
24 the Court otherwise excuses the failure. Fed. R. Civ. P. 33(b)(4).

25 Rule 34 provides for the production or inspection/copying/testing/sampling of
26 (A) any designated documents or electronically stored information
27 — including writings, drawings, graphs, charts, photographs, sound
28 recordings, images, and other data or data compilations — stored in
any medium from which information can be obtained either directly
or, if necessary, after translation by the responding party into a

1 reasonably usable form; or
2 (B) any designated tangible things. . .

3 Fed. R. Civ. P. 34(a). A request must describe with reasonable particularity each item or
4 category of items to be inspected; must specify a reasonable time, place, and manner for the
5 inspection and for performing the related acts; and may specify the form or forms in which
6 electronically stored information is to be produced. Fed. R. Civ. P. 34(b)(1). A party's response
7 to a request for production must — as to each item or category requested — either state that the
8 production will occur or “state with specificity the grounds for objecting to the request, including
9 the reasons. . . An objection must state whether any responsive materials are being withheld on
10 the basis of that objection. An objection to part of a request must specify the part and permit
11 inspection of the rest.” Fed. R. Civ. P. 34(b)(2)(B)–(C).

12 As relevant here, Rule 36 provides that if a matter in a request for admissions is not
13 admitted,

14 the answer must specifically deny it or state in detail why the
15 answering party cannot truthfully admit or deny it. A denial must
16 fairly respond to the substance of the matter; and when good faith
17 requires that a party qualify an answer or deny only a part of a
18 matter, the answer must specify the part admitted and qualify or
19 deny the rest. The answering party may assert lack of knowledge or
information as a reason for failing to admit or deny only if the party
states that it has made reasonable inquiry and that the information it
knows or can readily obtain is insufficient to enable it to admit or
deny.

20 Fed. R. Civ. P. 36(a)(4). Alternatively, the party may object to the request by stating the grounds
21 for the objection. Fed. R. Civ. P. 36(a)(5). If the requesting party deems a response to a request
22 for admissions deficient, she “may move to determine the sufficiency of an answer or objection.
23 Unless the court finds an objection justified, it must order that an answer be served. Fed. R. Civ.
24 P. 36(a)(6).

25 Finally, Rule 37 provides that a party may move for an order compelling disclosure or
26 discovery. Fed. R. Civ. P. 37(a)(1). “A party seeking discovery may move for an order
27 compelling an answer, designation, production, or inspection” where “(i) a deponent fails to
28 answer a question asked under Rule 30 or 31; (ii) a corporation or other entity fails to make a

1 designation under Rule 30(b)(6) or 31(a)(4); (iii) a party fails to answer an interrogatory
2 submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that
3 inspection will be permitted — or fails to permit inspection — as requested under Rule 34.” Fed.
4 R. Civ. P. 37(a)(3)(B). The party opposing the discovery bears the burden of resisting disclosure.
5 Bryant v. Armstrong, 285 F.R.D. 596, 600 (S.D. Cal. 2012).

6 **III.**

7 **DISCUSSION**

8 **A. Failure to Comply with Express Page Limit**

9 As an initial matter, the Court notes the parties’ joint dispute letter exceeded the four-page
10 limit set out in this Court’s standing order for informal discovery disputes procedures. As
11 expressly noted in the order, “[l]etter briefs which exceed the page limitations set forth herein will
12 be disregarded by the Court after the page limit is exceeded.” INFORMAL DISCOVERY DISPUTES
13 PROCEDURES FOR MAGISTRATE JUDGE STANLEY A. BOONE, CASE MANAGEMENT PROCEDURES,
14 <https://www.caed.uscourts.gov/caednew/index.cfn/judges/ass-judges/50161/> (last visited Apr. 29,
15 2022). The parties have attended multiple conferences to date in this action and are therefore
16 expected to be well-versed and compliant with this Court’s standing orders on case management
17 procedures.

18 Notwithstanding the foregoing, in the interests of justice, the Court will briefly address the
19 main issues identified and discussed at the informal hearing and provide rulings as to those
20 matters. However, as noted during the informal hearing, the parties are admonished that any
21 further discovery dispute letters filed in this matter which exceed the express page limit set forth
22 in this Court’s standing order will be summarily rejected and the informal hearing will be taken
23 off-calendar.

24 **B. Ruling**

25 As noted, Plaintiff takes issue with Defendant’s responses to RPD Nos. 2, 6–11, and 14–
26 15; SI Nos. 15, 16, 19, 21(d); and RFA No. 25, and seeks an order requiring Defendant to provide
27 further responses. Except as detailed herein, Plaintiff’s request is DENIED without prejudice to a
28 renewed request for responses appropriately limited to time, date, and language describing

1 category of document or information sought.

2 In general, the Court agrees with Defendant's objections that Plaintiff's requests are
3 overly broad, duplicative, and exceed in scope the applicable time period previously agreed to by
4 the parties during prior discovery dispute hearings. For example, RPDs 9 and 10 rely on a
5 definition of "YOU" and "YOUR" that includes Defense counsel; this definition is overly-
6 inclusive, thus Defendant's objections that the requests seek materials protected by attorney-client
7 privilege are well-taken. Moreover, the overly broad nature of the requests implicate a
8 duplication of production. RPD 8 is a good example of a properly narrowly-tailored request for
9 production; Plaintiff's RPDs 9 and 10 must adopt a similar style of specificity if further
10 documents are to be produced. Further, in RPD 10, the timeframe including everything from
11 January 1, 2018 "to the present" exceeds the timeframe previously agreed to by the parties, thus
12 rendering the request overly broad.¹

13 With respect to RFA 25, while Plaintiff characterizes the dispute as being one concerning
14 spoliation of evidence, the Court finds the response to her request for admission was appropriate.
15 To the extent Plaintiff contends Defendant has withheld relevant documents responsive to her
16 prior requests, and therefore Plaintiff is challenging the veracity of Defendant's responses, it
17 appears to this Court that the proper remedy is attained at trial, via *motions in limine* to preclude
18 admission of any responsive documents not produced in discovery, and/or on cross-examination.

19 With respect to SI 21(d), the Court finds Plaintiff's definition for "IDENTIFY" to be
20 excessive and overly burdensome with respect to all the manners in which Plaintiff seeks each
21 document to be identified. In light of the 15,000+ documents that have been produced, it is not
22 unreasonable for Defendant to provide narrowly-tailored descriptions of categories of evidence
23 produced, to the extent that it is plain to the parties what documents these categories relate to. To
24 the extent Defendant provides a response identifying some categories of documents responsive to
25 the request but noting its response is "not limited to" the aforementioned categories, however,
26 Defendant's response is deficient and must be supplemented. For the same reason, Defendant's

27 ¹ Further, at the instant hearing, the Court noted even the previously agreed to timeframe was excessive on the back
28 end, as the date of termination was May 4, 2020, and further modified the applicable time frame to: January 21, 2019,
through June 30, 2020.

1 reference to the category of “*various forecasts, including* daily forecasts,” (emphasis added) is
2 also deficient. In supplementing these responses, for example, Defendant should identify the
3 Bates numbers of the particular forecasts it referenced. Finally, the Court is not unsympathetic to
4 Plaintiff’s consternation that in response to her request for Defendant to identify all documents
5 relied upon in the termination decision, Defendant only identifies a single document by Bates
6 number, and generally references other categories of documents, “all of which have been
7 produced in supplemental rolling productions” (presumably at some point during the production
8 of the referenced 15,000+ documents), but identifies no other Bates numbers of documents, or
9 otherwise indicates when the responsive documents were produced. Nonetheless, the remedy is
10 at trial, pointing out that Defendant only relied upon the one Bates-numbered document actually
11 identified in response to Plaintiff’s request.

12 Finally, with respect to RPD 11, the Court notes Plaintiff’s request is denied at this time,
13 in light of the fact that Defendant agreed to review the particular at-issue documents identified by
14 Plaintiff and provide adequate supplemental responses. However, the request is denied without
15 prejudice to renewal if the responses are not sufficiently supplemented, which may also result in
16 an *in camera* review by the Court of the at-issue documents.

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IV.

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CONCLUSION

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Based on the foregoing, Plaintiff's request is denied except as to SI 21(d) and the matters
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discussed herein.

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IT IS SO ORDERED.

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Dated: April 29, 2022

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UNITED STATES MAGISTRATE JUDGE